

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**APPELLANT'S MAIN BRIEF ON APPEAL  
(RESUBMITTED)**

5

APPELLANTS:	Andrea Caserta, et al	DOCKET NO:	P04,0411-01
SERIAL NO.:	10/511,191	ART UNIT:	3742
FILED:	April 27, 2003	EXAMINER:	Sang Yeop Paik
		CONF. NO.	6955

TITLE: Active Substance Evaporator

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Commissioner for Patents  
PO Box 1450

10 Alexandria, VA 22313-1450

Sir:

The present Resubmitted Appeal Brief is being provided pursuant to the  
15 Notification of Non-Compliant Appeal Brief, mailed February 12, 2008, which  
indicated that the originally submitted Appeal Brief does not contain a statement  
of the status of the status of all claims.

Appellants respectfully state that the Appendix containing the claims  
indicates that claims 1–6 have a status of “cancelled”, and that claims 7–17 were  
20 “previously presented”. Under the “Status of the Claims” section, Appellants  
noted that claims 7–17 were rejected. However, Appellants recognize that the  
“cancelled” status of claims 1–6 only appears in the Appendix, and not under the  
“Status of the Claims” heading.

Therefore, Appellants have updated the “Status of Claims” section so that  
25 the required indication of status of all claims is concisely contained within this  
section. Appellants present the previously submitted Appeal Brief below.

In accordance with the provisions of 37 C.F.R. §41.37, Appellant submits  
this Brief in support of the appeal of the above-referenced application in support  
of the patentability of claims 7–17 finally rejected in the Office Action, dated

September 21, 2007. A copy of the claims on appeal is attached as Appendix A.  
A Notice of Appeal was filed on December 4, 2007.

### REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee, Zobebe Espana,  
5 S.A., a Spanish corporation, by virtue of the Assignment recorded October 28,  
2005, at reel/frame 017140 / 0498.

### RELATED APPEALS AND INTERFERENCES

There are no related appeals and no related interferences known to  
Appellant, Appellant's Assignee, or Appellant's legal representative.

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### STATUS OF CLAIMS

Claims 1–6 are cancelled, and claims 7–17 were rejected.

Claims 7–17 are on appeal, and constitute all pending claims of the  
application. The rejected claims were rejected as follows:

Claims	35 U.S.C. Sec.	References / Notes
7, 8, 10, & 12–17	§103(a) Obviousness	<ul style="list-style-type: none"><li>• O'Rourke (U.S. Patent No. 6,078,728);</li><li>• Flashinski (U.S. Patent No. 6,154,607); and</li><li>• Kennedy (U.S. Patent No. 5,695,692).</li></ul>
9	§103(a) Obviousness	<ul style="list-style-type: none"><li>• O'Rourke (U.S. Patent No. 6,078,728);</li><li>• Flashinski (U.S. Patent No. 6,154,607);</li><li>• Kennedy (U.S. Patent No. 5,695,692);</li><li>• Schroeder (U.S. patent No. 4,725,712); and</li><li>• Shibahashi (U.S. Patent No. 5,558,700).</li></ul>
11	§103(a) Obviousness	<ul style="list-style-type: none"><li>• O'Rourke (U.S. Patent No. 6,078,728);</li><li>• Flashinski (U.S. Patent No. 6,154,607);</li><li>• Kennedy (U.S. Patent No. 5,695,692); and</li><li>• (Sprick (U.S. Patent No.</li></ul>

		5,794,803); or • Fuchs (U.S. Patent No. 5,078,803).
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### STATUS OF AMENDMENTS

The last claim amendments were those made in a previously submitted Request for Continued Examination, which was filed September 12, 2006. These 5 amendments are reflected in Appendix A and serve as the basis for rejection in the Final Office Action. No further claim amendments have been provided or entered.

### SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants provide the following summary of the claimed subject matter.

10 The use of page and line numbers and reference characters in the drawings is provided by way of example and is in no way intended to limit the claimed subject matter unless expressly indicated.

7. An evaporator device for active substances, comprising:

15 a base body 1 (Fig. 4), in which is integrated a plug 2 (Fig. 4) for direct connection to an electrical power supply ([0017]);

a circuit comprising a PTC (Positive Temperature Coefficient) heating resistance ([0017], not shown in the Figures, but beneath the heating surface 3) connected to the integrated plug 2 that is configured to act on a heating surface 3 (Fig. 4, [0017]) near which 20 is placed an active substance;

wherein the base body 1 further comprises a removable and slidable support 8 (Fig. 4, [0018]) for the active substance, the support 8 comprising two housings 10, 11, (Fig. 4) respectively adapted in size and shape to two different types of containers 12, (Fig. 4) 13 (Fig. 5) of the active substances, the containers being a tablet 12 and tray 13 with a semi permeable membrane ([0018]), so that the 25 evaporator device can equally receive either type of container 12, 13 of the active substance ([0018]).

8. The evaporator device for active substances, as claimed in claim 7, wherein the base body 1 is U-shaped (Figs. 1, 2, [0013]), the base body 1 comprising a rear portion 4 and front portion 6, the front portion comprising aeration grilles 7 ([0018]), and the support 8 fitting between the rear portion 6 and front portion 4 of the base body 1 which, in an assembled position, establishes a surface continuity with the base body 1 and the housings 10, 11 for the tablet 12 and tray 13 are in a position adjacent to the heating surface 3 (Figs. 1, 2, [0018]).
- 10 16. The evaporator device for active substances, as claimed in claim 13, wherein the two housings 10, 11 are designed to be capable of holding two different containers 12, 13 simultaneously (Figs. 4, 5).

### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The issues on appeal are as follows:

1. Whether claims 7, 8, 10, and 12–17 are obvious over the combination of O'Rourke, et al. (U.S. Pat. No. 6,078,728), Flashinski, et al. (U.S. Pat. No. 6,154,607), and Kennedy (U.S. Pat. No. 5,695,692).
2. Whether claim 9 is obvious over the combination of O'Rourke, et al. (U.S. Pat. No. 6,078,728), Flashinski, et al. (U.S. Pat. No. 6,154,607), Kennedy (U.S. Pat. No. 5,695,692), Schroeder (U.S. Pat. No. 4,725,712), and Shibahashi, et al. (U.S. Pat. No. 5,558,700).
- 10 3. Whether claim 11 is obvious over the combination of O'Rourke, et al. (U.S. Pat. No. 6,078,728), Flashinski, et al. (U.S. Pat. No. 6,154,607), Kennedy (U.S. Pat. No. 5,695,692), Sprick (U.S. Pat. No. 5,794,803), and Fuchs (U.S. Pat. No. 5,078,288).

## ARGUMENTS

### ***ARGUMENT HEADING 1—Obviousness of claims 7, 8, 10, and 12–17 in view of O'Rourke, Flashinski, and Kennedy.***

#### ***Sub-heading 1.1—Obviousness of claims 7, 10, and 12–15 and 17 in view of O'Rourke, Flashinski, and Kennedy.***

***Examiner's Position: The combination of O'Rourke, Flashinski, and Kennedy renders claims 7, 10, and 12–15 and 17 obvious under 35 U.S.C. §103(a) because all of the elements of the claims are taught by this combination.***

10 In the OA, on pp. 2-3, the Examiner indicated that O'Rourke discloses an evaporator having a base body with an integrated plug, a heating surface to provide heating to an active substance on a removable or slidable support, and a base body with a U-shape having a rear and a front portion which further has aeration grills with a support fit between the rear and front portions and the lateral  
15 walls with protrusion.

The Examiner noted that O'Rourke does not show a PTC heating resistance and a support with two housings adapted in size and shape to two different types of containers of the active substances.

The Examiner then cited Flashinski as showing that it is known in the art to  
20 provide an evaporator with a PTC heating element, and a slidable support (30B) with a container being a tablet (24) having an active substance in a tray (20) with a fragrance-permeable membrane (28).

The Examiner then indicated that Kennedy shows that it is know in the art to provide a volatile carrying support or case with different housings that is  
25 capable of accommodating different and varying sizes of the active substances. The examiner noted that a first housing can be the circular shape with another housing formed of a triangle wedge shape inside the first housing and noted that each wedge section can be different housings in combination with each other to allow different containers to be inserted therein.

30 The Examiner noted, by way of example, that, in Kennedy, a semi-circular shape container can be inserted into the semi-circular shape housing section with

a wedge shape container inserted into the triangular wedge shape housing, and that a single wedge shaped container can be inserted therein as shown in Figure 1 or a circular shape can be inserted in the support as shown in Figures 6-8.

The Examiner then stated that in view of Flashinski and Kennedy, it would  
5 have been obvious to one of ordinary skill in the art to adapt O'Rourke with the PTC heating element, which is known in the art to provide a self-regulating heating, to more uniformly heat the volatile active substances, and further adapt with a carrier having compartments or housing wherein different shapes and sizes of active substances can be provided thereto to allow different volatile  
10 substances at different selected regions to be heated.

In the Response to Arguments section on pp. 5–6, the Examiner stated:

15 With respect to Kennedy, the applicant argues Kennedy shows multiple embodiments each of which discloses multiple housings, and since no single embodiment teaches the claimed support having two housings that is adapted in size and shape to two different types of containers. This argument is not deemed persuasive. As seen and illustrated in the drawing Figures of Kennedy, there can be two  
20 different types of active substances where a triangle wedge shaped active substance or a circular shaped active substance can be provided in a carrier support which has compartments that can accommodate such different sizes and shapes.

25 Furthermore, Figure 8 of Kennedy which is shown to carry a circular shaped active substance has the triangle compartment that is capable of carrying and supporting the triangle wedge shaped active substance as shown in Figure 1. The support  
30 structures of Kennedy which has [sic] the compartments shown to accommodating [sic] varying size and shapes of active substance clearly meets the recited support structure.

35 It is also noted that there is no other structural recitation or support in the claims that distinguishes the recited support from that of Kennedy's. The applicant argues that the examiner's position of interpreting different containers by Kennedy is based on an "obvious to do so" basis. This argument is not

5 deemed persuasive since Kennedy clearly shows the use of different types of containers that are clearly capable of being used in the support member as illustrated in Figures 1 and 8. The different type of containers can be provided in the support members as shown by Kennedy just as the recited evaporator device "can equally receive either type of container of the active substance."

10 ***Appellant's Position: The combination of O'Rourke, Flashinski, and Kennedy do not render claims 7, 10, and 12–15 and 17 obvious under 35 U.S.C. §103(a) because all of the elements of the claims are not taught by this combination.***

1. *Flashinski fails to teach or suggest a distinction between a tablet container and a tray container with a semi-permeable membrane..*

15 Regarding Flashinski, the Examiner stated, on p. 2:

Flashinski shows that it is known in the art to provide an evaporator device with a PTC heating element, and Flashinski further shows a slidable support (30B) with a container being a table[t] (24) having an active substance in a tray (20) with a fragrance permeable membrane (28).

20 Claim 7 requires that the support comprises two housings that are respectively adapted in size and shape to two different types of containers of active substances. In Flashinski, there is no disclosure of a distinction between a container that is a tablet and a container that is a tray with a semi-permeable membrane (i.e., two different types of containers). Flashinski only discloses one "type" of container, and thus cannot be used to teach or suggest two housings to house both tablet and tray containers. Flashinski discloses a solid porous substrate 24 that contains a volatile (liquid) 26 contained within a cavity 22, 30 formed in part by unlabeled ref. char. 32 in Figure 4.

Flashinski does state, at 5/16-22 that the impregnation of the solid substrate 24 can be replaced with a liquid or gel sans the substrate, but in no case does it disclose the presence of two housings adapted for two different types of containers that are a tablet and a tray. To the extent that the Examiner 35 is reading the solid porous substrate 24 or even the impregnated 26 solid porous



substrate on the “tray” of the present invention, then Flashinski fails to teach or suggest a tablet. To the extent that the Examiner is reading the solid porous substrate 24 or even the impregnated 26 solid porous substrate on the “tablet” of the present invention, then Flashinski fails to teach or suggest a “tray” (in this  
5 interpretation, if the Examiner is interpreting Flashinski’s element 32 as the “tray”, then there are not two different types of containers of active substances, as required by claim 7).

Appellants assert that Flashinski only shows a single container, and therefore does not disclose separate containers as being a tablet and a tray,  
10 which is pertinent to the relevance of Flashinski when addressing the obviousness of a claim which requires housings for two different types of containers.

Put another way, Appellants do note that Flashinski is not being cited by the Examiner for its disclosure of two different containers, one being a tablet, and  
15 the other being a tray with a semi permeable membrane, and indeed, Flashinski does not teach this—rather Flashinski teaches a single design in which the (arguably) “tablet” and tray with semi permeable membrane are one in the same element. In the present invention, these types are distinguished (see paragraph [0003])—the tablet is an element (such as paper) that is soaked with a substance  
20 for one-day use, whereas trays with gels are closed by a semi permeable membrane for a longer lasting protection.

What is significant is that the invention contemplates a design in which these two types of containers have differing characteristics that require differing containers, but that the evaporator device is able to accommodate these differing  
25 types of containers within the same device. Flashinski discloses only a single “tablet” and tray with a membrane, and thus only constitutes a single container.

*2. Kennedy fails to teach or suggest housing sections that can accommodate varying sizes of containers for the active substances in any one embodiment.*

Appellants respectfully disagree with this characterization, because the housing sections that can accommodate different sizes of active substances are all disclosed as separate embodiments, and there is no embodiment shown in which the housings can accommodate two different types of containers, particularly (as claimed) where the containers are a tablet and tray with a semi permeable membrane so that the evaporator device can equally receive either type of container of the active substance.

In the embodiment shown in Figure 1, the housing (cartridge 15) can hold multiple wedge-shaped blocks 32, but these blocks (containers) are all the same size and shape, and are not distinguishable in any manner such that one could be deemed a "tablet" and another a "tray". See Kennedy at 4/9-38.

Figure 6 shows a separate embodiment. Kennedy states, at 6/8-11:

Fig. 6 shows an alternative cartridge in which the holder 40 is formed without radial divisions and receives an annular block 41 of air freshening material. [emphasis added]

The annular block 41 shown in Figure 6 could not be utilized in the cartridge 15 shown in Figure 1, since the divisions 31 would preclude inserting the annular block 41 into the cartridge 15.

Again, Figures 7 and 8 show another separate embodiment. Kennedy states, at 5/13-15:

In Fig. 7 there is shown a further form of cartridge in which holder 45 has a spoked arrangement in which four spokes 46 extend radially from the hub portion 27. [emphasis added]

In this embodiment, the annular block has slits that accommodate the radially extending divisions 52 of the base 50 that do not meet at the center. In this design, the holder of Figure 8 would not accommodate the solid annular block 41 of Figure 6 that lacks the slits of the block shown in Figure 7. Nor could the block shown in Figure 7 be used in the cartridge 15 of Figure 1 since its central portion would not permit its inclusion.

The Examiner's argument thus appears to be that the base 50 of Figure 8

could equally accommodate either the annular block shown in Figure 7 or the wedge-shaped block 32 shown in Figure 1. While Kennedy does show multiple housings that support two different sizes and shapes of containers, it does not provide such a teaching in a single embodiment. The Examiner appears to infer  
5 that despite a lack of teaching of using the wedge 32 in Figure 1 in the base 50 of Figure 8 that it would be obvious to do so.

However, this is a hindsight analysis of the teaching of Kennedy. Kennedy discloses three separate embodiments and in each case discloses a container that is specifically adapted to the shape of the container of active substances (the  
10 complete wedge-shaped container, including the pointed section, in Figure 1, the circular container of Figure 6, and the circular container of Figure 8 that contains partial wedge-shaped portions). Kennedy failed to recognize the advantages of being able to implement different shapes and sizes of containers, as was inventively recognized by the inventors of the present application.

15 Furthermore, the partial wedge-shaped portions shown in Figure 8 would not be a “housing” for the wedges 32 shown in Figure 1, since a portion of the wedge piece 32 shown in Figure 1 would protrude beyond the walls of the container portion shown in Figure 8 and thus would not be a “housing” as would be required by a container as claimed. Or, alternately, the base 50 shown in  
20 Figure 8 comprises only a single housing that has interconnected regions, and that these regions all share a common central area so that these regions cannot be construed as, and read on, the claimed housing.

Additionally, the claimed language requires that not only are the containers of a different size and shape, but also that they are of a different type—one being  
25 a tablet and the other being a tray with a semi permeable membrane. Even if *arguendo* the Examiner’s argument related to the shape and size were conceded, the fact that the claimed containers be of different types is not taught or suggested by Kennedy.

A disclosure of separate supports comprising separate housings does not  
30 teach or suggest the single support of the present invention that comprises two

housings adapted in size and shape to two different types of containers of active substances, where the containers are a tablet and tray, nor is such a configuration obvious when looking to the teaching of Kennedy.

3. *It would not be obvious to combine Flashinski's teaching of a single*  
5 *"type" of container with Kennedy's disclosure of various shaped containers going*  
*into respectively shaped holders (in separate embodiments) to arrive at the*  
*present invention.*

Although Kennedy shows the possibility of using different types of active substance containers, and respective housings to accommodate these  
10 containers, these are all disclosed as separate embodiments, and in no case is a  
slidable support disclosed comprising two housings that are respectively adapted  
in size and shape to two different types of containers of the active substances.  
Since Flashinski further only discloses one type of a container, one of ordinary  
skill in the art would not turn to the teaching of Flashinski and its disclosure of a  
15 single container type in order to utilize the various shaped containers and  
respective holders of Kennedy to arrive at a design in which a body has a support  
comprising two housings respectively adapted in size and shape to two different  
types of containers of the active substances, where the containers are a tablet  
and a tray with a semi-permeable membrane, as required by claim 7 of the  
20 present application.

The present invention recognizes that containers in a form of a tablet and  
containers in a form of a tray with semi-permeable membrane may require  
different structural shapes and configurations, and have provided a solution for a  
device that is equally adept at handling either—an advantage not recognized in  
25 any of the prior art references.

Appellants do not disagree with the Examiner's characterization of  
O'Rourke's teaching of an evaporator having a base body with an integrated  
plug, and a heating surface to provide heating to an active substance provided on  
a removable slidable support, however Appellants do disagree that combining the

teachings of O'Rourke with those of Flashinski and Kennedy would allow one of ordinary skill in the art to arrive at the invention according to claim 7.

As indicated in MPEP 2143.01(III), the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness,  
5 unless the prior art also suggests the desirability of the combination. The Examiner has failed to provide a showing of how the prior art lacking a teaching of different types of containers in which the different types are a tablet and a tray with a semi-permeable membrane could teach or suggest a body with a support comprising two housings for respectively accommodating these different types of  
10 containers.

MPEP 2143.03 indicates that in order to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In the present case, none of the references, alone or combined, teaches the support comprising two housings adapted in size and  
15 shape to two different types of containers of active substances, wherein the two types are a tablet and a tray with a semi-permeable membrane.

Therefore, Applicants assert that amended claim 7 is new and inventive over the prior art, and respectfully request that the Examiner withdraw this §103(a) rejection from the present application.

20 Claims 10 and 12–14 are not argued separately, and therefore Appellants rely upon the above arguments for the non-obviousness of these claims that depend from claim 7 by virtue of their dependence. Appellants also rely upon the above arguments with respect to claim 15, with one further observation—to the extent that the “housing” structures are construed in the Examiner’s favor with  
25 regard to independent claim 7, dependent claim 15 requires that the containers correspond in shape to the housings, and the wedges, for reasons argued above, do not meet such a limitation of corresponding in shape. Additionally, with regard to claim 17, the limitation is more specific in that the inner surface of the two housings must be generally a same shape as outer surfaces of the containers  
30 that the housings hold. The truncated wedge sections

Therefore, Appellants respectfully submit that the Examiner is in error in law and in fact in rejecting claims 7, 8, 10, and 12–17.

***Sub-heading 1.2—Obviousness of claim 8 in view of O’Rourke, Flashinski, and Kennedy.***

***5 Examiner’s Position: The combination of O’Rourke, Flashinski, and Kennedy renders claim 8 obvious under 35 U.S.C. §103(a) because O’Rourke additionally teaches the limitation of a U-shaped body.***

In the OA, on p. 2 of the OA, the Examiner indicated that O’Rourke shows a base body having a U-shape. In the Response to Arguments section, on p. 6,  
10 the Examiner states:

The applicant argues that “U-shaped” generally means a curved bottom portion, straight side portions, and a straight to[p] portion. Figure 1 of O’Rourke shows the base body (12) having a curved portion and straight portions which meets the U-shape. It is also noted there is no other recited structural support to  
15 distinguish the recited U-shape from that of the U-shaped portion of O’Rourke.

***Appellants’ Position: O’Rourke does not teach a U-shaped body, as required by claim 8 of the present application, in that it does not disclose a generally flat top portion, as required by a U-shape and fails to provide a support that establishes a surface continuity with the base body and***  
20  ***housings.***

As correctly noted by the Examiner, Appellants assert that one of ordinary skill in the art would understand “U-shaped” to mean a generally curved bottom portion, straight side portions, and a straight top portion. O’Rourke does not disclose a shape having these features. At best, the shape disclosed by  
25 O’Rourke would be a generally truncated triangular shape having stepped regions. One of ordinary skill in the art would not understand the complex truncated triangular shape disclosed by O’Rourke as being “U-shaped”.

Furthermore, claim 8 requires that the support establishes a surface continuity with the base body and the housings. The support (volatile carrier 10)  
30 of O’Rourke does anything but establish a surface continuity with the base body. It protrudes awkwardly at a right angle to the base body and always juts out of at

least one side and sometimes both sides of the base body. One of ordinary skill in the art would certainly not understand the support of O'Rourke as establishing a surface continuity with the base body.

Therefore, Appellants respectfully submit that the Examiner is in error in  
5 law and in fact in rejecting claim 8.

***Sub-heading 1.3—Obviousness of claim 16 in view of O'Rourke, Flashinski, and Kennedy.***

***Examiner's Position: The Examiner has taken no position with respect to the additional limitations provided by claim 16.***

10 ***Appellants' Position: The combination of O'Rourke, Flashinski, and Kennedy fails to teach or suggest the housings being capable of holding two different containers simultaneously.***

Lacking any discussion with regard to claim 16, the Examiner has failed to establish a prima facie case of obviousness for claim 16. On this basis alone, the  
15 Appellants assert that the Examiner is in error in law in rejecting claim 16.

However, Appellants further note that claim 16 requires that the two housings are designed to be capable of holding two different containers simultaneously. Figure 4 of the present application shows the device holding a tablet product 12 in one housing, and Figure 6 of the present application shows  
20 the device holding a tray product 13—the design shown in Figure 4 indicates that both products could be present simultaneously in the product.

The Kennedy reference, to the extent that multiple wedge-shaped containers could be inserted into two respective wedge-shaped housings, fails to teach or suggest that the different-shaped containers could be provided into the  
25 respective different shaped housings, as would be required by the claims—the two containers pursuant to Kennedy, would be the same shape and thus not read on this claim.

Therefore, Appellants respectfully submit that the Examiner is in error in law and in fact in rejecting claim 16.

30 For the above reasons, Appellants respectfully contend that the present

invention is not obvious in light of O'Rourke, Flashinski, and Kennedy.

***HEADING 2—Obviousness of Claim 9 over O'Rourke, Flashinski, Kennedy, Schroeder, and Shibahashi.***

Appellants do not separately argue the patentability of claim 9, but rather  
5 rely upon the above arguments. The Examiner cited Schroeder and Shibahashi  
as disclosing features related to dependent claim 9. Appellants note that  
Schroeder and Shibahashi do not disclose the features missing from the  
combination argued under Heading 1 (and were not cited by the Examiner for  
such), and thus assert that claim 9 is non-obvious based on its dependency from  
10 claims as argued above.

***HEADING 3—Obviousness of Claim 11 over O'Rourke, Flashinski, Kennedy, Sprick, and Fuchs.***

Appellants do not separately argue the patentability of claim 11, but rather  
rely upon the above arguments. The Examiner cited Sprick, and Fuchs as  
15 disclosing features related to dependent claim 11. Appellants note that Sprick  
and Fuchs do not disclose the features missing from the combination argued  
under Heading 1 (and were not cited by the Examiner for such), and thus assert  
that claim 11 is non-obvious based on its dependency from claims as argued  
above.

20 For the above reasons, Appellants respectfully contend that the present  
invention is not obvious in light of O'Rourke, Flashinski, Kennedy, Schroeder,  
Shibahashi, Sprick, and Fuchs.

**CONCLUSION**

For the above reasons, Appellants respectfully submit that the Examiner is  
25 in error in law and in fact in rejecting claims 7–17 based on the teachings of the  
above-discussed references. Reversal of the rejection of all of those claims is  
justified, and the same is respectfully requested.



Authority has been electronically provided to charge the \$510.00 fee, as required by 37 C.F.R. §41.20(b)(2), to appellant's attorney's credit card. If necessary, the Commissioner is hereby authorized to charge any additional fees which may be required to Deposit Account No. 501519.

Respectfully submitted,

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## **APPENDIX A CLAIMS INVOLVED IN THE APPEAL**

1-6. (cancelled).

5

7. (previously presented) An evaporator device for active substances, comprising:

a base body in which is integrated a plug for direct connection to an electrical power supply;

10      a circuit comprising a PTC heating resistance connected to the integrated plug that is configured to act on a heating surface near which is placed an active substance;

wherein the base body further comprises a removable and slidable support for the active substance, the support comprising two housings, respectively adapted in size and shape to two different types of containers of the active substances, the containers being a tablet and tray with a semi permeable membrane, so that the evaporator device can equally receive either type of container of the active substance.

15

20

8. (previously presented) The evaporator device for active substances, as claimed in claim 7, wherein the base body is U-shaped, the base body comprising a rear portion and front portion, the front portion comprising aeration grilles, and the support fitting between the rear portion and front portion of the base body which, in an assembled position, establishes a surface continuity with the base body and the housings for the tablet and tray are in a position adjacent to the heating surface.

25

9. (previously presented) The evaporator device for active substances, as claimed in claim 7, further comprising:

5 a pattern made with thermochrome paint applied directly on the base body or on a complementary support attached to said base body, wherein the pattern changes colour at a temperature under which physical contact with the device is considered to be no longer dangerous.

10. (previously presented) The evaporator device for active substances, as claimed in claim 7, further comprising:

15 a safety mechanism that makes it difficult to slide and thereby open the support containing the tablet or tray of the active substance with respect to the base body, the safety mechanism comprising teeth established in a front end of lateral walls of the support which, in a closed position, lock against complementary locking teeth provided for this purpose in the inner part of the base body, preventing the displacement towards an extraction position of the support.

20 11. (previously presented) The evaporator device for active substances, as claimed in claim 10, wherein a side surface of the base body and near an area where the locking teeth are established has corresponding areas which, when pressed manually inwards and by the ensuing deformation, allow releasing the teeth from the complementary locking teeth and thereby also releasing the support, allowing it to move to the extraction position.

25

12. (previously presented) The evaporator device for active substances, as claimed in claim 10, wherein the lateral walls of the support comprise protrusions which, in the position of extraction of the support, limit the extraction by

contacting other protrusions provided for such purpose in inner walls as sliding guides for the support.

13. (previously presented) The evaporator device for active substances, as  
5 claimed in claim 7, wherein the two housings are of a different size.

14. (previously presented) The evaporator device for active substances, as  
claimed in claim 13, wherein one of the two housings is located inside of the  
other of the two housings.

10

15. (previously presented) The evaporator device for active substances, as  
claimed in claim 13, wherein the containers of the active substances are of  
different sizes that correspond in shape respectively to the two housings that are  
of a different size.

15

16. (previously presented) The evaporator device for active substances, as  
claimed in claim 13, wherein the two housings are designed to be capable of  
holding two different containers simultaneously.

20 17. (previously presented) The evaporator device for active substances, as  
claimed in claim 7, wherein an inner surface of the two housings is generally a  
same shape as outer surfaces of the containers that the housings hold.

**APPENDIX B  
EVIDENCE APPENDIX**

There is no additional evidence entered and relied upon for this appeal.

**APPENDIX C  
RELATED PROCEEDINGS APPENDIX**

There are no related proceedings associated with this appeal.